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REMARKS

Claims 19-31 have been indicated allowable. The remaining claims have been cancelled in order to expedite prosecution and because Applicant does not believe the Examiner will consider the merits of any arguments presented simply because the rejection has been made final. As such, the case is in condition for allowance.

Applicant respectfully traverses the rejections of record and the portion of the election of species requirement previously argued. Applicant further reserves the right to re-present the cancelled claims as well as any unclaimed subject matter in a subsequently filed continuing application.

Applicant further would like the following remarks made as part of the record, with the understanding that these claims will be re-presented in a subsequent continuing application.

The Examiner has deemed that the election/restriction was made final and thus, purportedly unchallengeable/unarguable. Applicant respectfully asserts that the Examiner withdrew *sua sponte* claims 14 and 15 in the previous office action despite Applicant's election, which included these claims. Thus, Applicant's challenge to this action was timely and the withdrawal of these claims by the Examiner is unsupportable under the law.

That basis of the Examiner's withdrawal continues to be reliance upon portions of the specification and assumptions made with respect to the claims rather than focusing on the actual language of the claims. Specifically, claims 14 and 15 do not contain language that limits them to "a device that has no separate passageway." In the response, the Examiner asserts that the "specification is not read into the claim language." However, since the language of the claims do not contain the elements the Examiner asserts are the basis for the withdrawal and the only "support" for the withdrawal is reference to a portion of the specification, the Examiner is very clearly reading in limitations that do not exist.

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With respect to the rejections under section 112, the Examiner continues to improperly subdivide the specification; picking and choosing sections in isolation. The Examiner asserts that:

"nothing in the disclosure suggests that the distributor of these figures is a sponge" and then states that –

"the sponge is shown in the later figures."

Of course, we are speaking of the exact same element 48, thus, there is something in the disclosure *that suggests* that the distributor is a sponge in one embodiment.

The Examiner further states that "if the surface of the distributor contained the correct shading . . . applicant's comments would be more convincing." A further assertion is made that the "shading" employed by the Applicant is for metal and provides the shading section of the MPEP. First, such shading is not mandatory. Second, the parts are illustrated *schematically* because they may be formed from different materials in different embodiments. Third, the *absence of shading* represents metal in an elevation view (e.g., FIG 3), or wood, or refractory material, or cork, or cheese, or sponge. The conclusion is the same; the notion that the *position* of one embodiment's textual description within the specification with respect to another for the same element cannot form the basis for a legitimate rejection under 35 USC 112, first paragraph.

Regarding the rejection under section 102, the claims in question fall under 35 USC 112, paragraph 6. Thus, the "means" recited must be determined from the specification, along with their equivalents. The cited reference does not teach these means or their equivalents. Thus, the rejection is improper. This is not particularly confusing. The specification contains multiple embodiments. The "means" language may include these various embodiments. None of these embodiments or their equivalents are disclosed by the reference; thus, the rejection is unsupportable.

The Examiner states that if "the claims are so broad that they encompass multiple possibilities, then the prior art anticipates the claim. This is a

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fundamental principle of claim examination." This is only correct if the prior art teaches *at least one* of those "possibilities." Again, the "possibilities" are taken from the specification for means plus function language along with their equivalents. The cited reference does not anticipate any of these "possibilities"; thus, the fundamental principle of claim examination is that if the reference does not teach the claim elements it cannot anticipate the claims.

Applicant respectfully asserts that the rejections and restriction requirements applied in this case have been erroneous and will result in excessive costs and fees being assessed for claims that are allowable and should have been examined.

As the pending claims have been indicated allowable, Applicant respectfully requests notice of the same.

Respectfully submitted,

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